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THE LOS ANGELES BAR ASSOCIATION

BULLETIN

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THE NEW CORPORATION LAW

LEGISLATIVE ATTACKS ON STATE BAR

ADMINISTRATION OF BANKRUPTCY LAW

THE WORLD COURT

THE "BLAZING CAR" CASE

"FOR THE GOOD OF THE PROFESSION"

THERE WILL BE NO FURTHER MEETINGS OF MEMBERS OF THE BAR ASSOCIATION UNTIL OCTOBER

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The New General Corporation Law of California

A PRELIMINARY SURVEY

By Graham L. Sterling, Jr., of the Los Angeles Bar*

The most important piece of legislation by the recently adjourned Legislature, at least from the viewpoint of most lawyers and of a large part of the business community, is the General Corporation Law. THE BULLETIN is fortunate in being able to present to the lawyers of Los Angeles County, far in advance of the effective date of the Act, the first analysis of some of the features of the new law by one who writes with understanding and authority by reason of his work in the revision of the law and his close association with the progress of the legislation. It is hoped and expected that Mr. Sterling will supplement this article with a later one in a future issue of THE BULLETIN.

For the first time since 1872 California has made extensive progress in the modernization of its corporation statutes. After hesitant faltering and stumbling along the road to corporate statutory reform for fifty-nine years, the State has veritably sprinted to the finish in 1931 by repealing all the existing Civil Code provisions relating to ordinary business corporations and praising a "General Corporation Law"[1] embracing sixteen chapters and some one hundred and seventy-five code sections, some of which restate existing code sections, but most of which are new in form or substance.

The State Bar is largely responsible for the new statute, having appointed a Committee on Revision of Corporation Laws in 1927 which has continuously functioned since then with some changes in personnel. Professor Henry W. Ballantine of the University of California has rendered invaluable service as Draftsman and Secretary of the Committee. The Committee at the outset found itself almost hopelessly hindered by corporate limitations in the State Constitution and it was not until a constitutional amendment was adopted by popular vote in November, 1930, that the way was cleared for a thorough-going revision of the corporation statutes.[2]

A scholarly analysis of the new California General Corporation Law is quite beyond the scope of this paper. At this time, however, almost two months before the new law will become effective, it may be desirable to direct attention of the Los Angeles Bar to certain of the more significant features of the new statute, with the hope that general interest may be aroused and at least a few proposed corporations saved from

* Mr. Sterling, associated with the firm of O'Melveny, Tuller & Myers, has been acting as Secretary of the Southern Section of the State Bar Committee on revision of corporation laws, the Southern Section including Joseph P. Loeb, of Loeb, Walker & Loeb, Chairman, Homer D. Crotty of Gibson, Dunn & Crutcher, Harry L. Dunn of O'Melveny, Tuller & Myers, Warren E. Libby of Libby & Sherwin, and Preston B. Plumb of Overton, Lyman & Plumb.

1. Assembly Bill 1000, entitled "An Act substituting for the existing title one of part four of division first of the Civil Code of the State of California a new title one of said part four consisting of sixteen chapters which shall supersede said existing title one and sections numbered consecutively 1227 to 1235, both numbers included, of the Code of Civil Procedure of California, all relating to corporations," was signed by Governor Rolph on June 12, 1931, and will become a law on August 14, 1931.

2. Senate Constitutional Amendment 24 (No. 16 on the ballot) amended sections 1 and 7 and repealed sections 2, 3, 9, 11, 12 and 14 of Article XII of the State Constitution. In general, the amendment gives to the legislature the power to provide for the formation, organization and regulation of corporations by general law, and to define the rights and obligations of officers, stockholders and members. Among the constitutional provisions repealed are (1) stockholders' proportionate liability for corporate debts; (2) directors' liability for moneys embezzled by officers; (3) the prohibition against increasing the stock or bonded indebtedness without two-thirds consent of stockholders; (4) the right of every stocknolder to cumulative voting (it was this provision together with that relating to stockholders' liability which by judicial interpretation of corresponding Civil Code sections made it unlawful to have non-voting stock, or part par and part no par, or shares of varying par values in a California corporation (see Film Producers v. Jordan 171 Cal. 664, 154 Pac. 605 (1916); and Del Monte Co. v. Jordan, 196 Cal. 488 (1925)); the cumulative voting right has been retained under the new law as to stockholders who are entitled to vote (sec. 320)).

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EDITORIAL

THE BULLETIN is designed to be a forum for the presentation of articles helpful to the members of the legal profession in Los Angeles County; to statements of the problems of the profession, and to discussions of matters intended to bring about the improvement by the Bar of the administration of justice. It is the medium which the Los Angeles Bar Association has always used, and will continue to use, in the interests of its members.

THE BULLETIN invites the lawyers in the community, whether members of the Bar Association or not, to submit articles upon subjects interesting and instructive to lawyers; the improvement of the administration of justice; the discussion of legal problems, and legal ethics; the relation of the bar to the public and what should be done to better the standing of the lawyer—in short, upon any and all subjects of a kindred character. The committee having charge of the publication will give careful and intelligent consideration to all such material.

The Committee in charge of publication believes there are many members of the bar who can assist in making THE BULLETIN of even greater service by submitting articles, and suggestions of subjects for articles, of the character indicated.

going out of the state for their incorporation.[3] If possible, a more detailed explanation of the new law will appear in a later number of the THE BULLETIN.

Without question, the two greatest accomplishments of the new legislation on corporations are (1) the elimination of stockholders' proportionate liability for corporate obligations,[4] and (2) a relaxation of the existing arbitrary limitation on stock structure.[5] No longer will California be known to the profession and the investing public as that "wild and wooly" western state where a stockholder has practically a partner's liability without a partner's advantages, and where all the shares of a corporation must be equal as to voting rights and par values, or the lack of par values.

OUTSTANDING FEATURES

Among the lesser, but nevertheless outstanding features of the new law may be considered: (a) the adoption of the Uniform Stock Transfer Act, virtually making a stock certificate a negotiable instrument;[6] (b) the authorization of binding voting trusts;[7] (c) an expansion of the permitted sources for dividend payments;[8] (d) modern, and it is hoped, workable and complete, provisions for merger and consolidation;[9] (e) the establishment of procedures for voluntary and involuntary dissolution[10] which eliminate one of the expensive inconveniences of the present law, namely, the prohibiting against dissolution until all corporate debts are paid.

Generalizations are, of course, dangerous and unsatisfactory, but from the viewpoint of the practicing corporation lawyer, it may be said that the new law has been drawn with two general, and, to some degree, overlapping purposes: first, the simplification of corporate procedure, and, second, the recognition that majority rule in stockholders' control is a sound, working premise, providing the majority act in good faith and with due regard for the interests of the minority. Instances of the former are (a) elimination of the requirement of stockholders' consent to mortgaging of the corporate assets,[11] (b) elimination of the necessity of applying to the Corporation Commissioner for authorization to make a capital distribution,[12] and (c) permitting extension of corporate existence by amendment of articles instead of the more elaborate procedure required at present.[13] Instances in which majority stockholder action has been substituted for the present requirement of action by two-thirds, in interest, of the stockholders, include (a) the removal of one or more directors;[14] (b) the adoption, amendment and repeal of by-laws;[15] (c) the sale of all, or substantially all, of the corporate assets;[16] (d) voluntary dissolution;[17] (e) reduction of capital.[18]

CUMULATIVE VOTING RETAINED

Minority stockholders, it is felt, will be amply protected by the retention of cumulative voting[19] and the increasing recognition by the courts of the equitable principle that the majority stockholders must exercise their rights in good faith with a conscientious view to the best interests of the corporation as a whole, and not for the purpose of oppressing or "squeezing out" the minority.[20]

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3. A valuable, although necessarily hastily prepared pamphlet entitled "Changes in the California Corporation Law" can be procured from the office of Fred B. Wood, Legislative Counsel, Sacramento. This pamphlet compiled by Mr. Wood's office contains a cross-reference to existing code sections.

4. This is effected by the Constitutional amendment discussed in note 2 supra and by the repeal of the present sections 322 and 322a of the Civil Code.

5. Section 294 of the new law expressly authorizes any combination of par and no par, varying par values and "full, limited or no voting rights."

6. See new sections 330 to 330.22, both inclusive.

7. New sections 321a.

8. New sections 346, 346a and 346b.

9. New sections 361, 361a and 361b.

10. New chapter XV, sections 399 to 404c, both inclusive.

11. New section 344.

12. New section 348b.

13. New section 362c.

14. New section 310.

15. New section 301.

16. New section 343.

17. New section 400.

18. New section 348.

19. New section 320.

20. A. A. Berle, Jr., *Corporate Powers as Powers in Trust,* 44 Harvard Law Review 1049.

From the standpoint of corporate theory, among the most interesting innovations are the provisions relating to stated capital and the effect thereon of acquistion by a corporation of its own shares. These provisions raise numerous extremely difficult questions which are worthy of study far more profound, and treatment far more comprehensive, than can be accorded them in this preliminary survey. But even an inadequate and superficial exposition may be of some value.

Stated Capital

Dissatisfied with the confusing statutory and judicial pronouncements in California on "capital" and "capital stock,"[21] the Committee started with the premise that the capital of a corporation, whether its shares be with or without par value, should represent values contributed by shareholders to the corporate enterprise and actually received by the corporation for use in the corporate business, to be preserved, as far as possible, for that purpose. From this premise it appeared (a) that shareholders should be permitted to contribute values in excess of capital, which, while subject to being used in the business, would not be restricted to such use, but might be used, for example, to pay dividends on preferred shares, and (b) that the corporate capital should not include amounts or values not actually received by the corporation for carrying on its business, as, for example, organization expense and commissions paid on the sale of shares.

The first of these objectives could be attained, the Committee found, with little or no opposition, and consequently the new law limits stated capital to the aggregate par value of outstanding shares having a par value, plus that portion of the consideration for no par shares designated as stated capital by the directors upon their issuance.[22] Anything in excess of such sum is, by inference, to be considered as paid-in or contributed surplus.

But the second objective, despite the resulting beneficial obviation of the fictitious asset often appearing on the corporate balance sheet under such innocent titles as "organization expense" or "stock discount" or "promotion expense," met with such determined opposition by eminent members of the accounting profession that, in the interest of uniformity of accounting practice, the Committee compromised to the extent of agreeing that stated capital would be defined in the new statute as the par value of outstanding shares having a par value, and that part of the consideration for no par shares ascribed to stated capital by the directors.

Shares Issued Below Par

It is to be noted, however, that in the case of par value shares issued for less than par, it is not the par value which is permitted to appear in the stated captial account, but only the net consideration less than par received by the corporation.[23] It may be difficult to defend this distinction in the stated capital account made by the new law between the case in which a corporation receives one hundred dollars ($100.00) for a one hundred dollar ($100.00) par share, and immediately pays out twenty dollars ($20.00) for selling commission, and the case in which it sells a one hundred dollar ($100.00) par share for eighty dollars ($80.00). But it is to be remembered that this distinction represents a compromise with an exacting, and, to the lawyer, a not always intelligible profession. At any rate, the fictitious asset "stock discount" has been banished from the balance sheet of California corporations—at least such is the intention.

Corporation Acquiring Its Own Shares

In connection with stated capital it is interesting to note the effect of the acquisition by a corporation of its own shares. Except in limited and clearly specified instances, such as (a) comprising a claim of a stockholder; (b) payment of cash value to a dissenting shareholder; (c) repurchase of shares from an employee; (d) the elimination of fractional shares, and (e) redemption or conversion of shares, a corporation may purchase its shares only with earned surplus.[24] Upon such acquisition out of earned surplus, no reduction may be made in the stated capital account unless the shares are cancelled and retired, that is, restored to the status of authorized but not issued shares, and thus made subject to all the statutory regulations as to original issuance. If not so cancelled and retired, they have the status of treasury shares, which is to say, they are deemed outstanding for the purpose of computing stated capital and may be disposed of for any consideration

21. See Dominguez Land Corporation v. Daugherty, 196 Cal. 453, 468 (1925).
22. New section 300b.
23. New section 300b.
24. New section 342a.

fixed by the directors, free from the restrictions imposed by the new law on original issuance, but they are not deemed outstanding for dividend or voting purposes.[25] Possibly as a deterrent to speculation by a corporation in its own shares, it is provided that any amount received by a corporation on the sale of treasury shares must be added to stated capital and paid-in surplus in the proportions provided in the section on stated capital. The requirement of such addition must, it seems, inferentially be construed as a modification of the definition of stated capital set forth in the section defining stated capital which provides, among other things, that stated capital shall consist of the aggregate par value of outstanding shares having a par value.

Those of its shares acquired by a corporation as a gift or bequest or upon distribution from another corporation cannot, under the new law, be carried as treasury shares and must consequently be restored to the status of authorized but unissued shares without any reduction in stated capital. This requirement that such restoration of donated shares shall effect no change in stated capital must apparently be construed as a further limitation on the definition of stated capital contained in Section 300b.

When a corporation acquires its shares for any of the specific purposes enumerated above, that is, otherwise than out of earned surplus, such shares must be restored to the status of authorized but unissued shares and presumably a reduction in capital is a necessary consequence in view of the definition of stated capital above referred to.

Increase of Stated Capital

Stated capital may be increased at any time merely by resolution of the board of directors directing that a portion of the surplus of the corporation be transferred to the stated capital account.[26]

Reduction of Stated Capital

To reduce stated capital under the new law, only two steps are necessary: first, a resolution of the board of directors, and second, the approval thereof by the vote or written consent of the holders of shares representing a majority of the voting power.[27] It is required that the directors' resolution set forth the amount of the reduction and the method by which any outstanding par value shares shall be adjusted to the stated capital as reduced.

In the first place the word "liabilities" is so embracing as to cause the practicing lawyer grave concern. The fundamental objection, however, to the limitation is that stated capital, which is, of course, merely a book entry intended to indicate to some extent the source and amount of the values originally contributed by stockholders for retention in the corporate business, has nothing in the world to do with debts and liabilities—at least so far as its reduction is concerned. The limitation is reminiscent of the old statutory prohibition against a corporation's incurring debts in excess of its capital stock, and must be put down as "just one of those things" about the new law that will have to be changed in 1933.[29]

Distribution of Surplus

The procedure as to distribution of surplus created by a reduction of stated capital has been removed from the jurisdiction of the Corporation Commissioner, and is made subject only to two general limitations: first, the corporation must be left with assets at least equal to its debts and liabilities plus the reduced stated capital, and second, distributions must be made in order of the preferences, if any, of the outstanding shares.[28] As a matter of notice to the creditors of the corporation, it is required that, at least fourteen days before any such distribution, the corporation file with the Secretary of State a certificate containing a financial statement which will include the amount of its debts and liabilities and the estimated fair present value of its assets, and stating that the board of directors has determined that the proposed distribution will not reduce the value of the remaining assets to an amount less that the debts and liabilities, plus the reduced stated capital. A copy of such certificate, certified by the Secretary of State, is required to be filed in the office of the county clerk of the county in which the corporation has its principal office.

There are many features of the new General Corporation Law which have not been mentioned in this discussion, and many of the features which have been mentioned deserve further consideration and explanation. It is hoped that the changes not discussed above can be brought to the attention of the Los Angeles Bar in a later

(Continued on page 325)

25. New section 342b.
26. New section 348c.
27. New section 348.
28. New section 348b.

President Walker's Message to Members

DISCUSSES INCREASE IN SUPERIOR COURT JUDGES. MUNICIPAL COURT ELECTION

A most important step towards alleviation of the congestion in our local Superior and Municipal Courts and the consequent delay in the trial of cases was taken at this session of the State Legislature by the adoption of the two Bills increasing the number of judges of the Superior Court in this County by twelve and the number of judges of the Municipal Court of Los Angeles by four. Need for this relief was imperative and particularly so in the Superior Court. At the time of the adoption of this measure there were approximately eight thousand cases at issue and awaiting trial in the Superior Court of this County. The courts available for trial duty had not only been unable to make headway in reducing this large number of untried cases but were actually losing ground at the rate of approximately one hundred and fifty cases per month and this in spite of the fact as shown by statistics prepared concerning this and other comparable counties in the State that the trial judges of this County have been disposing of a greater number of trials per court day than in any other county in the State.

The Los Angeles Bar Association, through its representatives, was very active in acquainting the legislators with the need for this relief. President Irving M. Walker of the Association, accompanied by Honorable Leslie R. Hewitt and Past President Kemper B. Campbell, made the long trek to Sacramento on at least three occasions for the purpose of laying the facts before the Committees of the Senate and of the Assembly having these Bills under consideration. The final adoption of these measures is due at least in part to the very earnest efforts of the Bar Association through these representatives.

The gratitude of this Association is also due to the members of the Legislature from this County, several of whom are members of the Los Angeles Bar Association, who were aware of the necessity for the passage of these Bills and worked valiantly for that purpose. Without their support nothing could have been accomplished.

Election of Municipal Judges

The election of Municipal judges this month resulted in the selection by the voters of this city of all of the candidates who had received the endorsement of the Los Angeles Bar Association. The Judiciary Campaign Committee of this Association, Ewell D. Moore, Chairman, Isaac Pacht, Clyde Burr, J. W. Sutphen and Frank B. Belcher did very excellent work. The finances at their disposal were very small and after mature consideration they adopted the plan of expending the available funds for advertising in the metropolitan and community newspapers. These advertisements were to the effect that the following candidates, naming them, had received the endorsement of the Los Angeles Bar Association as those best qualified for election. All but two of the endorsed candidates were elected at the primaries and in the final campaign the Committee adjusted its advertising schedule to reach those communities in which the two remaining candidates appeared to need additional support.

The selection by the voters of all of the candidates endorsed by the Bar Association is a strong indication that the public regards the Bar Association endorsement as a reliable guide in the selection of judges.

Sincerely.

Irving M. Walker
President of Los Angeles Bar Association.

Legislative Attacks Upon State Bar

GUERRILLA TACTICS TO DESTROY SELF-GOVERNING FEATURES. BILLS DESIGNED TO CRIPPLE BAR DEFEATED. VIGILANCE OF FRIENDS NECESSARY IN FUTURE.

By Alfred L. Bartlett, of the Los Angeles Bar

Experience at the last session of the Legislature has demonstrated that if the State Bar of California is to retain its self-governing features and is to remain a potent influence for good in the profession, the individual members of that organization must exercise that eternal vigilance which is said to be the price of liberty.

From the bills introduced at the last session of the Legislature and from the appearances made in behalf of those measures before the Assembly Judiciary Committee, it is evident that the State Bar has organized opposition. Its enemies, feeling probably that any attempt to openly repeal the State Bar Act would be foredoomed to failure, have adopted guerrilla tactics which if successful would so take away the self-governing features of the Act and so cripple and hamper the State Bar in its work, that there would be no logical excuse left for its continued existence.

Let us consider briefly some typical bills of this type:

ASSEMBLY BILL NO. 457 introduced by Assemblyman Quigley of San Francisco, and ASSEMBLY BILL NO 769 introduced by Assemblyman Hornblower of San Francisco, while not identical measures, were designed to accomplish the same purpose. These bills provide for the initiative and referendum as applied to all acts of the Board of Governors of the State Bar, and also that individual members of the Board be subject to recall.

The Board of Governors, according to the State Bar Act, possesses only executive and administrative functions. The initiative and referendum are methods for directly enacting or suspending legislation and are of course not appropriate instrumentalities in relation to functions which are not legislative in their nature. As drawn, these bills would permit the exercise of the referendum on decisions of the Board of Governors in disciplinary matters. This would mean that the decisions of the Board of Governors in disciplining a lawyer or in dismissing a complaint filed against a lawyer, could be put to a vote of the entire Bar, the members of which had not heard the evidence.

So far as the recall is concerned, the duties of the Board of Governors with regard to the disciplining of attorneys are analogous to those of the Medical Board, Dental Board and other semi-judicial bodies the members of which are not subject to recall. There is no need for such a provision, as half of the membership of the Board of Governors is changed each year anyway. Such a provision could only result in keeping the Bar in a constant turmoil and making it almost impossible to induce the right type of lawyer to serve on such a board.

Had ASSEMBLY BILL NO. 770, introduced by Assemblyman Hornblower, been passed, the State Bar would no longer have been a self-governing body. This measure provides for the payment of all State Bar funds into a special fund in the State Treasury but expresses no purposes for which funds may be expended and strikes out all of the present provisions authorizing expenditures. Under the provisions of Section 22 of ARTICLE IV of the State Constitution which provides that "no money shall be drawn from the Treasury but in consequence of appropriation made by law, and upon warrants duly drawn thereon by the Controller," the decision as to the propriety of any expenditure by the State Bar would lie with the controller. The bill carries no appropriation. No funds would be available except on executive order of the Department of Finance until the Legislature made an appropriation. It is believed also that such a provision would bring the State Bar within the provisions of the Civil Service Act and all members of its staff would have to be Civil Service employees, except attorneys, and attorneys could not be employed without the permission of the Attorney General. It was the principle of self-government embodied in the State Bar Act which induced the lawyers of the state to advocate its passage originally.

ASSEMBLY BILL NO. 771 introduced by Assemblyman Hornblower made two changes in the present law by providing (1) That each applicant failing to pass the Bar

examinations should have the right to inspect his examination papers and grades; and (2) requiring the Supreme Court, upon demand, to review the examination papers of unsuccessful applicants for admission to practice. The bill was amended by striking out the second provision and as amended passed both houses of the Legislature. The objection to requiring the Supreme Court to review examination papers would seem to be indicated by a statement of the requirement. The State Board of Bar Examiners was created to relieve the Courts of the arduous and detailed work of conducting examinations. The performance of such an administrative function by the Supreme Court would undoubtedly take up its time to such an extent that it would interfere with the performance of its judicial duties.

There was one bill introduced which aimed directly to return to the old method of procedure in disciplinary matters in effect before the passage of the State Bar Act. This is ASSEMBLY BILL NO. 423 introduced by Assemblyman Morrison of San Francisco. It provided that no proceeding could be brought seeking to discipline an attorney in any manner unless an accusation was filed in the Supreme Court, the District Court of Appeal, or the Superior Court. The bill further set up a statute of limitations of one year on any misconduct of an attorney. It would seem unthinkable that because an attorney for a period of one year successfully concealed the fact that he had embezzled his client's money, he should not be subject to discipline of any kind.

All of these measures, except the one indicate which was amended to strike out its most objectionable feature, were, after lengthy argument, laid on the table by the Assembly Judiciary Committee. Those who appeared in behalf of these measures appeared in behalf of all of them. Had they been successful in their efforts the incorporated State Bar would not only have been invisible, intangible and existing only in contemplation of law, but would have been without powers or excuse for being.

Administration of Bankruptcy Law

SOLICITOR GENERAL OF UNITED STATES ENLISTS ASSISTANCE OF BAR ASSOCIATIONS IN NATION-WIDE SURVEY

The Federal Government, through the Department of Justice, has undertaken a nation-wide inquiry into the bankruptcy law and its administration, and has requested the cooperation of the bar associations in its desire to obtain the views of experienced and qualified attorneys in various parts of the country as to the present administration and the legislative or other changes that may seem desirable.

The Los Angeles Bar Association accordingly has appointed a committee to submit such information and to make such recommendations to the Solicitor General, on the subjects under investigation, as it may see fit. The personnel of the committee appointed by President Irving M. Walker is as follows:

Norman A. Bailie, Dale Parke, Preston B. Plumb, and Allen W. Ashburn.

In the Solicitor General's memorandum to all attorneys selected by the Presidents of the various local bar association he says:

"In the last ten years the losses to creditors through bankruptcy have been steadily mounting and in the last five fiscal years have totaled over three billions of dollars. Our statistics indicate that on an average at least three-fourths of the losses to creditors have occurred prior to the initiation of bankruptcy proceedings."

Among the numerous phases of the situation on which the Solicitor General is seeking information is the Administration of bankrupt estates, in connection with which his memorandum says:

"It would be helpful if attorneys would care to let us know what criticisms or complaints, if any, of the administration of bankrupt estates are commonly made in their community; the general reputation of those active in bankruptcy matters including Referees, Trustees, attorneys, trade organizations, collection agencies, etc.; whether or not changes should be made in such matters as the method of selection and compensation of receivers, trustees, attorneys and Referees. Should the Referees be given more power? Should their number be reduced and their territory enlarged? Should they be compensated on a salary basis instead of by commission?

Baltimore Bar and Banks Agree

CORPORATE PRACTICE OF THE LAW DISCONTINUED

Gradually, from month to month, and in many widely separated places, the corporate practice of the law by the banks and trust companies is receiving the attention of the bar associations. Banks and trust companies it appears are being convinced that they are in fact practicing law, and in many of the large cities they have entered into agreements with the bar associations to discontinue the acts complained of.

Last month THE BULLETIN printed the agreement between the New Orleans Clearing House Association and the Bar Association. The latest successful negotiations between the banks and the bar, at Baltimore, resulted in agreement, as follows:

1. Banks and trust companies agree that they will not maintain legal departments, except for the assistance and guidance of their own officers and employees.

2. Banks and trust companies agree that they will not (either directly or through lawyers retained or paid by them separately in each instance) prepare corporate charters and other corporate papers for corporations other than themselves, and they agree also that they will not prepare wills (either directly or through lawyers retained or paid by them separately in each instance). Nor will they prepare agreements or trust or deeds of trust to which they are parties except in collaboration with counsel for the settler, it being understood, however, that they may prepare other legal papers when they are parties thereto.

3. The members of the Bar realize that when a client names a bank or trust company as a fiduciary under a legal instrument, it may sometimes be desirable, the client consenting, to consult with the representatives of the trust department as to certain questions affecting the practical administration of the trust or the duties to be performed by the fiduciary.

4. The members of the Bar recognize that where any person is referred by a bank or trust company to an attorney, relative to his will, the attorney should not suggest his own appointment as executor or trustee under such will.

5. Banks and trust companies shall endeavor to cause persons or parties doing business with their trust departments to consult legal counsel of their own choosing with respect to all matters of a legal nature.

6. Banks and trust companies agree that they will not advertise or solicit in violation of Clauses 1, 2 and 5 hereof.

CUYAHOGA COUNTY BAR ASSOCIATION (CLEVELAND, O.,) RESORTS TO INJUNCTION TO COMBAT CORPORATE PRACTICE OF LAW

The lawyers of Cleveland have for a long time carried on a campaign to curb the practice of law by corporations and unauthorized individuals. The latest and most drastic step taken is described in an article by Barruch A. Feldman, member of the "Practice of Law Committee of the Cuyahoga County Bar Association," contributed to "The Summons," published by the Tau Epsilon Rho Fraternity. In this article Mr. Feldman, after recounting the failure to get relief, says:

"These failures did not discourage the members of the Practice of Law Committee. Early this year, in the name of a practicing at orney, it filed several injunction suits against minor corporations practicing law. Each of the petitions in these suits recited that plaintiff was an attorney; that as such he was a member of a class that possessed the exclusive franchise to practice law; that defendant was not licensed to practice law; that defendant did practice law; that defendant thereby interfered with the exclusive franchise to practice law possessed by the class to which plaintiff belonged; that therefore plaintiff was entitled to an injunction restraining defendant from practicing law.

"The real test of whether practice of law by corporations can be eliminated by injunction suits will be had when six suits recently filed against Cleveland's largest Trust Companies and Abstract Companies are finally adjudicated. If the Bar Association is successful, the pioneer work in combating practice of law by corporations will have been completed. Attorneys everywhere will have at their beck and call an easily applicable and certain method of eliminating corporate practice of law."

The World Court

ITS ACCOMPLISHMENTS REVIEWED IN ADDRESS BEFORE BAR ASSOCIATION BY DISTINGUISHED COLORADO LAWYER

By L. Ward Bannister, member of the Colorado Bar

L. WARD BANNISTER, distinguished member of the Colorado Bar, recently delivered a most interesting address to the Bar Association members. THE BULLETIN presents portions of the address for the benefit of those who were not present at the meeting.

Ten millions of dead, over fifteen millions of mutilated, and more than four hundred and fifty billions of dollars! Such are the losses a German statistician chalks up as the consequences of the World War to the United States and the other nations engaged in it. What are we going to do about it? How are repetitions to be averted or at least minimized in frequency?

Proper military and naval "preparedness" are indispensable to national safety, and the United States is not going to limit its armament unless other nations limit theirs. At the same time mere "preparedness" is of little value as a device for the rational adjustment of international controversies. For peaceful solutions we must look to other and more constructive agencies.

When we hear men of little faith attack such an institution as the World Court as a device for peaceful settlement, let us compel them to think constructively by asking them what feasible substitute of their own they have to offer or whether they admit they have none. Men and women who have known the horror and burden of war give short shrift to the man without remedy. They give no credence to the proposition that the best way to promote international peace is to prepare for international war.

Accomplishments of World Court

The World Court, which is more of a proposal of the United States than of any other nation, began functioning in 1922. Fifty-five nations have signed the organization or charter statute known as the Statute of the World Court and forty-five of them have ratified the signature. Sixteen opinions have been handed down by the Court in contentious cases between litigating nations and eighteen advisory opinions have been rendered. The personnel of the Court is of the highest character in point of integrity, learning and experience in international affairs. Cases have been decided which if not submitted to judicial action might well have caused war. In short, the Court during its brief existence already has won for itself the confidence of nearly all the nations of the world.

Jurisdiction

The Court entertains no controversies between individuals but only those between nations.

A nation on becoming a member of the Court may subject itself, at its choice, to any of three jurisdictions of the Court: first, only as to such controversies as the member-nation, at the time they arise, may voluntarily choose to submit for decision without any commitment in advance to do so; second, as to controversies arising under any of its treaties containing an agreement that such controversies arising thereunder shall be referred to the Court; and third, "compulsory" jurisdiction of controversies in general without knowing in advance how or when they may arise or of exactly what nature. Thirty-five nations have so much confidence in the Court that they have accepted this third class of jurisdiction, but the United States in joining the Court under the Protocols or treaties signed by it at the instance of the President and by him submitted to the Senate for ratification, would subject itself only to the first kind of jurisdiction. In other words, the United States would submit for determination only such controversies as, at the time they arise, it may then choose to submit.

It is scarcely contemplated under any of the kinds of jurisdiction that international controversies of every character should go to the Court. There are controversies which are the product of conflict in national policies. There are other controversies which

are more distinctly of a justiciable character; such for example as the interpretation of treaties; the determination of what, on a given point, is the rule of international law or of custom; or even, under some circumstances, the formulation of some new principle of international justice; the ascertainment of some fact and the extent of reparation for a breach of some international obligation. It is only questions of a justiciable nature that are adapted to judicial decision by the Court. The questions of policy would have to be left to the remedies of diplomacy and conciliation, or, so far as nations belong to the League of Nations —most of them do—to the processes of that organization.

The Three Protocols

The treaties of Protocols submitted by the President to the Senate for ratification are: (1) of the Statute of the Court which is the treaty by which the separate nations chartered or created the Court; (2) of the Revision of the Statute of the Court by which the Statute first mentioned is to be amended so as to improve further the functioning of the Court, as for instance by increasing the number of judges and requiring all of their time; and (3) of Adherence by the United States to the Statute of the Court. This last Protocol is the particular subject of our interest because it is the one which explicitly defines the terms upon which the United States would join the Court. Only the Protocol of Adherence can be discussed here.

The Protocol of Adherence

In 1926 the Senate voted that the United States would adhere to the Court upon five reservations or conditions to be accepted by the other member-nations of the Court. The purpose of the Protocol of Adherence is to serve as the agreement between the United States and the other nations whereby the United States would be received into the membership of the Court upon the very reservations or conditions imposed by the Senate.

The Protocol accepts the five reservations and provides the machinery by which those of the reservations in need of it may be carried out. By the acceptance of the first four reservations the Protocol provides: that the United States is not to belong in any way to the League of Nations or to assume any obligation under the Treaty of Versailles; is to be permitted to participate on a basis of equality with the members of the Assembly and Council of the League in the election of the judges; is to pay a fair share of the maintenance expense of the Court as determined by the United States itself; that the United States may at any time withdraw from the Court and that the Statute of the Court, (the organization statute or charter), shall not be amended without the consent of the United States. That these four reservations imposed by the Senate have been accepted by the language of the Protocol of Adherence is conceded. The same thing is true of the first half of the fifth reservation requiring that all advisory opinions handed down shall be rendered only publicly after notice to all States adhering to the Court and with full opportunity to be heard by any State concerned.

The second half of the fifth reservation provides that the Court shall not "without the consent of the United States entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest." Some question has been raised by opponents of the Court as to whether the Protocol complies with this half of the fifth reservation. But Article V of the Protocol, as appears from the masterly analysis of Elihu Root, accepts this reservation also, by providing that as long as the United States is a member of the Court no advisory opinion could be rendered over the protest of the United States, and that the only way the United States could cease to be a member would be either by the United States exercising its right of withdrawal from the Protocol of Adherence or by two-thirds of the other signatory States exercising their similar right of withdrawal. Not one of the eighteen advisory opinions thus far rendered has been of a kind that the United States would have desired to forestall. Invariably these opinions on international questions have been helpful to the Council of the League in its attempt to maintain peace among the nations of Europe, it is highly improbable that, once in the Court, either the United States or the other nations would dissolve the Protocol of Adherence by withdrawing from it. If withdrawal were to occur, however, the situation would be no different from what it is today and in the meantime the United States would have had the advantage of exercising its influence in its own behalf as a member of the Court in a degree greater by far than it would

have had were it only an outsider. It is a case where it is better to be "on the inside looking out than on the outside looking in."

The "Irreconcilables"

Some of our citizens, even a few in the Senate, are not content with the reservations of the Senate and are against our adherence to the Court on practically any terms whatsoever. These opponents we call the "irreconcilables."

One of their objections is to the effect that the Court is the "back-door to the League of Nations." The Court and the League, however, are separate institutions. Indeed there are some nations that belong to the League without belonging to the Court and some belonging to the Court without belonging to the League. Personally and along with most Americans I am opposed to our entering the League of Nations as now constituted. We should not, however, be blind to the distinction between the League and the Court.

Another objection of the "irreconcilables" is that the rendition of advisory opinions at the instance of the Council or the Assembly of the League makes the Court the League's lawyer. By the same token the rendition of advisory opinions by some of our state supreme courts at the instance of state legislatures should make those courts the lawyers of the legislatures, yet no one contends that they are.

A third objection is that the Court, after all, is the League's court and subject to its control. Here again the "irreconcilables" are wrong. The Court neither belongs to the League nor is subject to its control. While it is true that a committee of jurists designated by the Council of the League, and including Elihu Root as one of its members, drafted the Statute of the Court chartering the Court, nevertheless it was not the League that signed the Statute but the nations acting separately. It was they and not the League that created the Court. While the Council or Assembly of the League may request an advisory opinion the Court may refuse to give it and has been known to do so. Although nominally the League defrays the charges and expenses of the Court, the League does it from money advanced by the different nations as part of their budget and as their agent. While the nations constituting the Council and Assembly of the League elect the judges, and do so in the sessions of the Council and Assembly, yet it is the nations that, one by one and separately, do the voting. Indeed as Chief Justice Hughes has pointed out, both great nations and small nations must be satisfied with the judges chosen, and if the League machinery did not exist the nations would have to set up similar machinery outside of the League, dividing the nations into two groups, one consisting of the great nations and corresponding to the Council, the other of the small and corresponding to the Assembly, and require the judicial nominee to receive the favorable vote of a majority of each group, as now in the League. Nominations to the bench of the Court are not made by the League or any of its agencies but by the member-nations of the Court. The League can neither dismiss a judge of the Court nor review its decisions. The Conclusion of all this is that while the Court sustains certain legal relations to the League, they are not—and this is the vital point—of the nature to give the League control over the Court's decisions.

Public Opinion

Public opinion increasingly favors the entry of the United States into the Court. A recent poll of the press of the country of approximately two thousand newspapers reveals that, of those taking a position one way or the other, there were thirteen hundred and fifty-seven for entry into the Court and only two hundred sixty-five against. In California there were one hundred and six favoring entry and thirty-four opposed. The American Bar Association and the United tates Chamber of Commerce endorse our entry. Presidents Roosevelt, Wilson, Harding, Coolidge and Hoover, and such eminent jurists as Chief Justice Hughes and John W. Davis, likewise are pronounced advocates of adherence. The opponents of the Court can point to no leadership of equal caliber.

Conclusion

Whatever the United States can do to promote the cause of the peaceful settlement of international disputes should be done. The Court needs the additional strength and prestige our adherence would impart. We also need the Court. We need it because to the extent it offers peaceful solutions, it decreases the likelihood of wars in which we might become involved. Our need is not less because of the fact that the court would decide controversies between other nations as well as between other nations and our

(Continued on page 325)

Dr. Millikan Speaks to Lawyers

The regular monthly meeting of the Los Angeles Bar Association for May was addressed by Doctor Robert A. Millikan, world-famous scientist, who is known to most people in California. "Education and Unemployment" was his announced subject, but the title is not aptly descriptive of all he said. Doctor Millikan, who by the way, has a most entertaining style as well as a real message to thinking people, told the very large crowd present that he considered the administration of justice as the most important problem facing the people, and that the lawyers could do a great deal toward solving it. In commenting upon the national crime situation he quoted numerous statistics to support his premise that prohibition was not responsible for the growth of crime; that the ratio of increase in crime, particularly homicides, from about the year 1900, had been fairly steady, rising from about 5.5 homicides to the 100,000 population in 1900, to about 9.5 in 1930. He believed that we are becoming "a criminal people," and that prohibition had nothing to do with it.

Dr. Millikan emphasized the fact that in the past scientists and technoligists had devoted a very large part of their energies to increasing production. The result has been that 48 percent of the population of the United States can now produce the necessaries of life for the entire people. The most important economic problem at present is to find means of increasing consumption in ways that will benefit the human race.

A partial solution of this problem, according to Dr. Millikan, would be by increasing the amount and improving the quality of education. It is even now one of the large "industries" of the country, with an annual expenditure of approximately two and one-half billion dollars for the grades to and including high school, out of a total yearly income of a little more than thirteen billion dollars. The yearly earnings of the country would justify a very much larger appropriation for education, rather than to devote so much of it to automobiles, radios, the movies, and cosmetics. No doubt all of these have some merit, he said, but it is a little hard to see in what way the enormous use of cosmetics is advancing civilization.

Dr. Millikan told the members of the local Bar that he believed the most effective way of using additional funds for education is to have them added to the endowments of privately operated institutions and that the work of such institutions is a spur to greater endeavor by schools and colleges maintained by the public.

In closing, the eminent scientist stressed the point that education is capable of indefinite expansion and, if it is of the right kind, is wholly beneficent.

Many Visiting Judges Presiding

Six Superior Court Judges from Northern counties are sitting in Los Angeles this month. The assignments of these judges, which are subject to change without notice, and their departments, are as follows:

Judge Thomas H. Selvage from Humboldt County, Dept. 2; Judge Warren V. Tryon, from Del Norte County, Dept. 6; Judge Eugene P. McDaniel, from Yuba County, Dept. 18; Judge L. T. Price, from Alpine County, Dept. 35; Judge Henry B. Neville, from Sierra County, Dept. 42; and Judge J. T. B. Warne, from Tuolumne County, Dept. 48.

In addition to these visiting Superior Judges, five of the Municipal Court Judges are sitting temporarily in Superior Court departments, as follows: Judges Thomas L. Ambrose, Guy F. Bush, Wm. Fredrickson, Charles E. Haas, Carl A. Stutsman, Henry M. Willis, and H. Parker Wood.

In the Municipal Court twelve justices of the peace from various parts of the county have been temporarily assigned to as many divisions, as follows: Judges Collamer A. Bridge, 26; Frank Carroll, 1; Geo. Damon, 9; Charles R. Dyer, 13; August B. Edler, 21; Will G. Fields, 27; C. E. Hollopster, 28; Louis W. Kaufman, 10; John A. H. Sturgeon, 23; Carl B. Sturzenacker, 14; C. H. Thompson, 9, and Burt L. Wix, 2.

Judge William D. McConnell

RESOLUTION ADOPTED BY THE LOS ANGELES BAR ASSOCIATION UPON THE DEATH OF A VALUED MEMBER AND AN HONORED JUDGE

On February 15, 1931, at his home in Los Angeles, Judge William D. McConnell of the Municipal Court passed away, at the age of 64 years. Born in Sidney, Indiana, graduated from the Law School at Valpariso, Indiana, in 1893, he practiced law in Indiana and at Galesburg, Ill. Judge McConnell saw active service in the Spanish American War, with the Third Engineers, in Cuba. He came to Los Angeles in 1901, and was engaged in general practice here until his appointment as Deputy City Prosecutor in 1912. From that year until his death he served the city successively as City Prosecutor, Police Judge, and Judge of the Municipal Court. By assignment of the Judicial Council, he served for a time as Judge of the Superior Court of this County.

Judge McConnell was a member of the Los Angeles Bar Association from 1923 to his death. He took an active part in the Hollywood Presbyterian Church, and served on its official board. He was always active in the social and fraternal life of the city; was a Thirty-second Degree Mason, a Knight Templar, member of the Al Malaikah Shrine, Loyal Order of Moose, Elks, United Veterans of the Republic, Knights of Pythias, Foresters, Eagles, and Woodmen of the World. He leaves a widow, three brothers and a sister.

Judge McConnell was an exemplary citizen, a just judge, a true friend, a kind husband and a Christian gentleman. In his intercourse with his fellow-men, he was quiet, modest, and unassuming. In his performance of duty he was steadfast and unswerving, though always affable, kind and sympathetic. Because of these attributes he had many friends. Those who knew him best loved him most. He was a man of sterling character and inflexible integrity. His ability was unquestioned. Those who remain to carry on the work which he loved and in which he took such a prominent part will miss his warm hand-clasp, his wise counsel, his kindly sympathy, his comforting presence. The memory of his splendid life and work will be to them a guide and an inspiration; and though they shall see him no more, his influence will live and inspire them to higher ideals and more faithful service.

By the Committee—
JOSEPH CHAMBERS.
WILLIAM FREDERICKSON.
HENRY M. WILLIS.

DECEASED MEMBERS

The following members of the Bar Association have died since January 1, 1931:

Hugh T. Gordon, Tom C. Thornton, Andrew Wistrand, Guy Grieco, Frank L. Muhleman, W. E. McClintock, Hon. Wm. D. McDonnell, Gesner Williams, Hon. Frank R. Willis, Harry L. Person, J. H. Van Law, John H. Wellman, Richard R. Tanner, Will S. Tipton, Dan W. Simms, and Rugby Ross.

What Price Bankruptcy

AMAZING RECORD OF LOSSES TO CREDITORS IN 1930 BANKRUPTCY PROCEEDINGS. SOUTHERN CALIFORNIA DISTRICT FIGURES AMONG THE LARGEST IN THE U. S.

Buried in the maze of bankruptcy statistics set out in the report of the Attorney General of the United States to Congress, are matters that should give much mental food to inquiring minds groping for causes of our business catalepsy. It remained for the JOURNAL OF THE NATIONAL ASSOCIATION OF REFEREES IN BANKRUPTCY to dig out these statistics and put them in digestible form in its latest issue. The showing is so astounding that THE BULLETIN, disregarding the dislike of the average reader for "figgers," ventures to print some significant summaries, particularly those of our own Southern California District. Parenthetically, it may be said here that THE BULLETIN will have other and further things to say, from time to time, about "Bankruptcy" in our own fair city.

Confining this article therefore to the Attorney General's figures, it is to be noted that there were concluded in the Southern California District in 1930, 2138 bankruptcy cases, listing obligations totaling $68,378,086.87.

Poor Creditors!

Upon this vast sum the creditors received $7,894,186.03, or 11.54 percent. The administration fees and expenses amounted to $1,233,908.24, and the attorneys fees, to $367,632.63.

For the entire United States, the report shows, the total number of cases concluded in 1930 was 60,548, in which the total obligations listed amounted to $948,257,731.90. The administration fees and expenses totaled $22,220,143.95; and attorneys fees, $7,663,708.95. The creditors received $81,827,463.33, or 8.63 percent of the obligations.

The "Blazing Car" Case

AN EXAMPLE OF SPEEDY JUSTICE IN THE LONDON CRIMINAL COURT. OBSERVATIONS BY PROMINENT LOS ANGELES ATTORNEY ON ENGLISH TRIAL PROCEDURE.

By George E. Farrand, of the Los Angeles Bar

Comparisons are odious, but we lawyers must admit that criminal cases in English courts are disposed of more promptly than we dispose of them in our courts, either federal or state.

One of the most sensational and extraordinary crimes of recent years was the so-called "Blazing car" case tried recently in the Central Criminal Courts, London, England. The defendant, Alfred Arthur Rouse, was indicted and convicted of murder. Less than four months elapsed from the date of the crime to the execution of the defendant. Within that short period of time the defendant was caught, indicted, arraigned, tried for the crime before a jury, convicted, motions subsequent to conviction were made and disposed of, and an appeal taken to and a decision had thereon by the Court of Criminal Appeals, and the defendant was executed.

The facts were complicated and sensational. Numerous technical and expert witnesses were called, sworn, and examined. The facts were these, so the London papers tell us: On November 5, 1930, the defendant picked up a man, probably somewhere in North London, and gave him a lift in his car bound for the Midlands. Nobody knows, or probably ever will know, who he was, whether a derelict or a man seeking work. Within a few hours after boarding the car, this nameless passenger had been put to death on a lonely by-lane in the Midlands, in a scientific furnace of blazing petrol. The only motive for the crime, which is not explained, is that the defendant wished, for reasons of his own, to have his own death presumed. He was involved in various complications, including domestic ones. The case against the defendant became complete. Rouse was spoken to by a police officer and his passenger was seen. Something had gone wrong with his lights. Rouse then drove on and within two hours the deed was accomplished. The lane where the murder was committed generally has few visitors at that time of the night, but on that particular night it had two witnesses, both disinterested.

Suspicion was fastened on the defendant who was arrested in Wales. He explained that the passenger whom he had befriended with a ride had met his death by setting the car accidentally on fire. He explained his flight because he was panic stricken.

Numerous experts were called at the trial —experts on petrol, on fires, on the effect of burning petrol upon a human body. Between the conflicting experts the jury decided that the posture of the body when found at the ruins of the burned car was incompatible with an accidental death. The defendant was found guilty. The appeal was on the ground that the verdict was against the weight of the evidence, and that the jury were prejudiced because they must have known of the defendant's domestic and other embarrassments from the proceedings before the Magistrate. The Court of Appeals refused the plea. The conviction stood and the defendant was executed.

And all within four months!

I have spent many weeks on several occasions in the courts, both civil and criminal, at London, at Edinburg, and at Dublin. In the Central Criminal Courts I have often seen two and sometimes three complete contested felony cases disposed of in one day in one court before one jury, including in each instance, arraignment, plea, opening address, evidence, argument of attorneys, instructions of the court, deliberation of jury, verdict, motions for a new trial, and, in case of conviction, searching inquiry into the defendant's records and the pronouncing of final judgment with the defendant remanded, with a sentence actually begun!!

From everything which I could see, no substantial right of any sort of the defendant was infringed upon in even the slightest degree. The third degree by the police seems to be unknown and not tolerated. In one case I saw a defendant in a felony case dismissed by the Judge in the midst of the trial when it appeared that the arresting officers had interrogated the defendant without telling him what his legal rights were and warning him that whatever he said might be used against him.

State and Local Bar Cooperate on Unlawful Practice Problems

The Los Angeles Bar Association has appointed a special committee of nine members to cooperate with and assist the State Bar Committee in its present consideration of the subject of unlawful practice, particularly of the charges of unlawful practice of banks and trust companies.

The personnel of this committee is as follows: Frank G. Finlayson, *Chairman;* Richard C. Goodspeed, John W. Hart, Julius V. Patrosso, J. Perry Wood, Kemper Campbell, A. L. Bartlett, Oscar J. Seiler, and Norman A. Bailie.

It is stated that if it be found that banks and trust companies in California are unlawfully practicing law, as has been charged in many quarters, it is a state-wide condition, and becomes a matter that, from a practice standpoint, can be best dealt with by the State Bar.

SAN FRANCISCO BAR ASSOCIATION COMMITTEE MAKES STRONG REPORT ON BANKING PRACTICE

Criticisms of the operation and administration of the Federal Bankruptcy Law caused the Board of Governors of the Bar Association of San Francisco to authorize President Randolph V. Whiting to appoint a committee to make an investigation and report to the board. On that committee President Whiting named former United States Circuit Judge William H. Hunt, chairman; Clarence A. Shuey, Milton Newmark, Sterling Carr and Bartley C. Crum.

The report recommends many changes. It believes the referee's compensation should be on salary basis; favors the appointment of four or five referees for all Northern California; condemns soliciting of professional employment, and the delay in the administration of a bankrupt's estate.

Evolution of the Legal Position of Women

AN HISTORICAL REVIEW OF THE TRADITIONAL SUBJECTION OF WOMAN, HER EMERGENCE, AFTER CENTURIES, AND THE ACHIEVEMENTS OF HER SEX IN MODERN CIVILIZATION AND LEGISLATION. CHRONICLE OF EVENTS THAT BROUGHT THIS GREAT CHANGE

By Delvy Thomas Walton, of the Los Angeles Bar

(Second Installment—Continued from the May Bulletin)

Women Were "Chattels"

Hesiod sums up in one line the early Greek conception of women as mere chattels: "First of all get yourself a house and a woman and an ox to plough with." (Hesiod "Works and Days" p. 405) And showing to what unlimited extent women had before his time been looked upon as mere articles of property, Solon forbade the sale of daughters or sisters into slavery by fathers or brothers. (Grote vol. 2, p. 509)

In Athens public opinion laid down that a woman was nothing but a means of procuring a supply of citizens, and therefore men set about to ensure this result in the most logical manner, remembering that the most important object was to avoid the slightest chance of spurious blood entering the strain. In Sparta it was not purity of blood which was the ruling passion, but strength of muscle, and the women were not sacrificed to chastity but to war.

Coming to the Roman matron, we find her position quite different from that of the Greek. In Rome she was supreme in all household arrangements and above all, she was respected by her husband. (Heitland vol 1, ch xx sec. 226) Her legal position, however, was quite primitive and dependent. Roman women were under the perpetual tutelage of their fathers, or nearest male relative before marriage, and then passed bag and baggage to the power of their husbands. Early Roman law, indeed, did not hear of a woman as a wife; she was in its eyes the *daughter* of her husband. She could not make a will, or contract; nor could she inherit property from anyone dying intestate except from her husband or brother. Owing to her imbecility—the exact Latin word—she was given certain minor privileges; for example, she could plead ignorance of the law in some circumstances and she was on occasion exempted from torture. Gradually, however, these disabilities disappeared and many changes were brought about.

Under the English Common Law

The common law of England practically reproduced for the wife the dependent status which the older Roman law assigned to all members of the family except the head. In many ways her circumscribed position was more severe on her than the laws of Rome pertaining to a slave. For example, a slave might have his *peculium*, which, to a certain extent, the law guaranteed to him for his exclusive use, while the common law recognized no such advantage of "permissive property" to woman. She was born to her place in life and chained down by an inexorable bond. In marriage the doctrine prevailed that for most purposes husband and wife formed a single person, represented by the husband, and as a consequence of this legal merger it has been said that "the very being or legal existence of the woman is suspended during their marriage, or at least it is incorporated and consolidated into that of the husband. . . . The wife . . . . hath no separate interest in anything during her coveture." (1 Bl. Com. 442, Miller v. Newton 23 Col. 554) The husband was considered her *baron*, or lord, and she was under his influence and protection.

The legal position of woman in society at that time was comparable to that of no other class except the slave. As the slave took the name of his master, so the woman upon marriage gave up her own and took that of her husband. Like the slave, the married woman was permitted to own no property. (John Stuart Mill "Subjection of Women.") The earnings of the slave belonged to the master, those of the wife to the husband. Without her consent damages for injury to her person or reputation also might be released by him, or if collected in her lifetime they became his separate property. (Phillips v. Barnett, 1 Q.B.D. 436, 438) Neither slave nor wife could make a valid contract, (Leev. Lanahan, 59 Me. 479) sue or be sued, or establish a business—both were said to be "dead in law." (John

Langdon Davies' "A Short History of Women" 1927) The children of the slave belonged to the master; those of the wife to the husband. Not even after the death of the husband was the wife a legal guardian of her own children, unless he made her so by will. While living he could give them away, and at death could will them as he pleased.

Husband's Control Absolute

At common law absolute ownership and control of all her personal property was acquired by him as to personalty in possession; her choses in action or property requiring some action to realize its full possession or enjoyment did not vest in him until he reduced them to possession. In other words, marriage at common law operated as a gift to the husband of all the movable effects of the wife of which she was actually or beneficially in possession at the time in her own right, or which came to her during coveture, and of all her choses in action which he reduced to possession during coveture. (Prewitt v. Bunch, 101 Tenn., 723, 2 Bl. Com. 435) The husband's control of the wife's personalty in possession is unlimited and unrestricted at common law. (Bacon's Abr. "Baron & Feme") He may make any disposition of it during her lifetime, without her consent, and hence it follows that she has no interest in it which she can convey. It could be levied upon for the husband's debts, or bequeathed by him to strangers, or if he died intestate, it passed to his personal representatives, even though the wife survived him. (Oglander v. Baston, 1 Vern. ch. 396)

There was, however, one exception to the common law rule that the wife's personalty vested absolutely in the husband, and that was with respect to her articles of wearing apparel and personal ornament termed her "paraphernalia." While they were the property of the husband during coveture (Graham v. Londonderry, 3 Atk. 393) and he could dispose of them (Tipping v. Tipping, 1 P. Wms. 729) and they were also subject to his debts, yet they could not be bequeathed by him. At his death they belonged to his wife, subject, however, to the rights of his creditors in case he died indebted.

Rights and Obligations of Husband and Wife

The husband was made liable during coverture for debts contracted by his wife before marriage. Blackstone says "he has adopted her and her circumstances together." This liability was assigned to the husband not because of the fact that the legal existence of the wife was merged in that of her husband, or any idea that he is debtor, but because she was entirely deprived by marriage of the use and disposal of her property, and could acquire none by her industry. Another strong reason would seem to be the protection of the wife from imprisonment alone for nonpayment of the debt, as such imprisonment would place her in a condition altogether dependent on the will of the husband; both husband and wife were to be imprisoned and thereby a sufficient inducement afforded to cause the husband to pay the debt, for their mutual release. (Fultz v. Fox, 9 B. Mon. (Ky.) 499)

At common law a wife was not under any incapacity in respect to the commission of torts, as she was in respect of contracts. She had the obvious human capacity of doing harm to others, and was competent at law to incur an obligation *ex delicto*. If she incurred such an obligation, it attached properly upon herself, and not upon her husband. For a tort committed by a wife was, and is, no cause of action against her husband. (Keyworth v. Hill, 3 B. & A. 685) In consequence, however, of the general common law rule, that a married woman could not sue or be sued by herself alone, it was necessary, on suing a wife for her tort, to join her husband as co-defendant. (Bacon's Abr. "Baron and Feme"). If the action were successful, judgment was given against the husband and wife jointly. The wife was personally liable upon such a judgment just as much as the husband; and before the abolition of imprisonment for debt, she might have been taken in execution and imprisoned to satisfy such a judgment, whether her husband were also taken in execution or not. (Finch v. Duddin, 2 Stra. 1237, Ferguson v. Clayworth, 6 Q.B.D. 269)

The wife alone was liable at common law for her antenuptial crimes; but after marriage, if she committed a crime, less than treason or murder, in his presence and by his command, it was presumed *prima facie* that he coerced her, and she was not responsible therefor.

Property Rights

As to her real property, the husband became seized, during coverture (Metro Bank v. Hitz, 12 D. C. 111, Oldham v. Hender-

son, 6 Dana (Ky.) 254) of a freehold estate in all the lands in which his wife had an estate of inheritance. Where the husband survives the wife, the estate is for the life of the wife only, unless by virtue of the birth of issue he is entitled to an estate for the remainder of his life as tenant by the curtesy. The life estates of the wife inure upon her marriage to the benefit of her husband. (2 Kent Com. p. 134) He likewise has an interest in her right in the chattels real of which she is or may be possessed during the coverture. (Dold v. Geiger 2 Gratt. (43 W. Va. 98). Her estates or terms for years belong to his use absolutely during coverture.

In general, the husband had a right during coverture to the possession and control of the real property owned by the wife, and entitled to the rents, issues and profits accruing from such property; the interest may be conveyed by him or subjected to his debts; his wife could not alien her estate unless he joined, or devise even with his assent, unless when exercising a power granted to her at the creation of the estate, nor could she derive any benefit or income therefrom by any contract which she could make separately. (Hanlon v. Thayer (Mass.) Quincy 99; Fowler v. Shearer, 7 Mass. 14, Nolin v. Pearson, 191 Mass. 254)

There is one right of the wife in the real property which must be mentioned. After the death of the husband, the wife surviving, she is entitled to the well known dower interest of one-third of the real estate whereof the husband was seized in his own right at any time during coverture, and which would be inheritable by any child born of the marriage, it not being necessary, however, that there should actually be a child born. (Littleton, sec. 36; 4 Kent Com. 35)

Land Tenure at Common Law

Unmarried women, on the other hand, were comparatively free under the different legal systems of European countries. By marriage, however, she and her husband became one person in law and the marriage service as paraphrased by the common law was said to be "With all *thy* worldly goods I *me* endow."

There is one important factor behind this unity under the common law as pertains to real property which offers some explanation for its continued existence. Under the feudal doctrine in England, the tenure of land involved the duty of fighting for the overlord in all his battles; clearly a woman could not fulfill this duty and therefore her holding of land was regarded almost as a conspiracy to defraud the overlord of his lawful rights. If therefore a young girl inherited land from her father, or if a widow inherited land from her husband their position was precarious and wretched The overlord demanded and could enforce marriage or re-marriage with all the force of justice and custom on his side. A fief being land held in return for military service, what right had a woman to hold a fief? Clearly it was her duty to change the anomalous position in which she found herself and that with the least possible delay.

Additional features of the status of the parties were that the husband, as head of the household was entitled to select the domicile of the parties, whither the wife is bound to follow him, except to prison or into banishment. He also had the right moderately to chastise her, and the ancient idea of moderation is indicated by the permission to use for that wholesome exercise a stick no bigger than a man's thumb (1 Bl. Com. 444) or the judge's finger. For "as he is to answer for her misbehaviors, the law thought it reasonable to intrust him with this power of restraining her by domestic chastisement." (1 Bl. Com. 445)

But in England this power of correction soon began to be doubted, and the disabilities which, as Blackstone states (1 Bl. 445) were for the most part "intended for her protection and benefit" gave way. This splendid optimism of the erudite commentator in 1763 had long since been disregarded in our early American colonial settlements, for Massachusetts (Colonial Laws, 1641) as early as 1641 declared the wife to be free from corporal correction by the husband. (Southworth v. Packard, 7 Mass. 95; Queen v. Jackson, (1891) I J.B.D. 671).

Under the various laws woman's subordination was never the result of deliberation or forethought but rested upon tradition and custom—in short, the marked differences between the two sexes. She was placed in a state of "bondage" from the very earliest twilight of human society owing to the value attached to her by men (the Turk who shuts up his wife at least proves to us that she is necessary to him), combined with her inferiority in masculine strength.

Rousseau (In Emile Book V) taught that woman's sole sphere was to give pleasure to man, and that her education was only to be regarded as it affected men. Ruskin, be-

loved as he was by the female sex, advised them to learn only so much natural science as would enable them to converse intelligently with their husbands. Their business was love—not wisdom. And Swedenborg, that wonderful Swedish poet, said "Wisdom must exist with the man and be loved by his wife."

Commencement of Fight for Equality

It was the capture of Constantinople by the Turks in 1453 and the consequent dissemination of fugitive knowledge from the libraries and studies of the Eastern capital; the discovery of America in 1492; enlarging the sphere of human imagination; the reformation of the sixteenth century, and the renaissance, concluding with the ferment of the French revolution which spread to other countries that caused the leaders of women to undertake vigorously the campaign for political, economic and legal equality with man. It was during this last period that the "female character" became a definite concept. (Vindication of the Rights of Women, 342). "Would men," cried Mary Wollstonecraft in 1792. "but generously snap our chains, and be content with rational fellowship instead of slavish obedience, they would find us more observant daughters, more affectionate sisters, more faithful wives, more reasonable mothers—in a word, better citizens."

And so we see that the laws began by recognizing the relations as they found them existing, converting a mere physical fact and existing custom into a legal right, giving it the sanction of society. "True indeed it is," said Dicey, (Law and Opinion in England, 1905) "that the existence and the alteration of human institutions must in a sense, always and everywhere depend upon the beliefs or feelings, or, in other words, upon the opinion of the society in which such institutions flourish."

Wife's "Equity to a Settlement"

For centuries prior to 1800 the Court of Chancery had been waging constant war against the exorbitant common-law rights. By the early part of the nineteenth century, and certainly before any of the Married Women's Property Act in England (1870-1983) came into operation, courts of equity introduced the doctrine of the wife's "equity to a settlement," (2 Pomeroy Eq. jur., Sec. 1114, Tiffany, Real Prop., Sec. 177) in direct antagonism to the common law. The effect of this innovation was that where the husband or his assignee or creditors sought the aid of a court of equity to obtain possession of the wife's property, or where in any other manner the subject of the wife's property which had not been reduced to possession or become vested absolutely in the husband was brought before and within the control of a court of equity, that court would require that a suitable provision or settlement be made for the wife and her children out of such property. (Brown v. Elton, 3 P. Wms. 202). Broadly speaking, in equity with respect to such separate estate, she was treated as though she were unmarried. (Pomeroy, supra, Sec. 159)

The equity to a settlement, however, was soon found to afford but little and imperfect protection to the wife, and courts of equity soon began to permit property of every kind to be settled upon the wife to her own separate and exclusive use, free from the control of her husband, and from liability for his debts. (2 Story Eq. Jur. Sec. 1378)

By 1695 the wife's separate estate was a well-settled doctrine of equity. (Drake v. Storr 1 Freem. 205) By it her equitable separate estate secured such property to her sole and separate use during coverture, and was recognized and unheld by courts of equity, to the exclusion (for the purpose of such use) of the husband's general common-law rights, (Tullet v. Armstrong 1 Beav. 1, 17 Eng. Chl.) free from liability for his debts. Such an estate may be created by will, by marriage settlement, conveyance, or other instrument inter vivos, either before marriage, or during coverture, or, in case of personal property, by parol. (30 C. J. 796)

(Continued in July Bulletin)

CORPORATION LAW OF CALIFORNIA

(Continued from page 304)

article which will appear in the BULLETIN either in July or August. In the meantime this superficial exposition will have served its purpose if it has done no more than apprised the Los Angeles Bar that there is a new corporation law, and indicated not only some of its outstanding provisions but also some of the questions which will undoubtedly arise when lawyers attempt to practice under it.[29]

29. It must be remembered that the drafting of an entirely new corporation law is a tremendous undertaking, especially when the necessary work is done by lawyers whose professional duties, whether practicing or teaching, must necessarily occupy the larger part of their time. Some discrepancies in the new statute undoubtedly crept in during the trying legislative process. Many amendments were made in both houses and many of the new sections represent compromises between varying views.

THE WORLD COURT

(Continued from page 315)

own. War once begun easily spreads beyond the original participants. The World War is so called because in its final expansion it included so many nations. The history of our own country shows that we are not exempt from this universal risk. We have fought four foreign wars. In the Mexican and Spanish-American wars we were an original participant but the War of 1812 began as a conflict between England and France, and the World War as a conflict between Austira and Serbia. We became embroiled in both not as original participants but later through the violation of our rights as neutrals. That we may not be an original participant is no guaranty that we shall not participate later.

Forty-five nations now belong to the Court and ten other signatures await ratification. Our own adherence would represent the least and safest effective step that we could take in the direction of an organized effort to maintain world peace; and the highest considerations of national interest now impel us to take it.

For the Good of the Profession

PROFESSIONAL ETHICS

The Council on Legal Education and Admissions to the Bar submitted a report to the Executive Committee of the American Bar Association at its May meeting in Washington, D. C., favoring a separate and required course in Professional Ethics in all law schools, and also in favor of making an examination in that subject a requirement for admission to the Bar. The Council further stated that it plans to pursue the subject with each State Board of Bar Examiners and to endeavor to secure the adoption by each State Board of a rule that professional ethics shall be included in each Bar Examination.

TOO MANY LAWYERS

Every year 10,000 persons are admitted to the practice of the law, writes Will Shafroth in the American Bar Association Journal for June. The number of lawyers in the country at the end of 1930, according to the Martindale count, was 146,953, or one lawyer to every 837 persons. These figures are concededly too low. It is estimated that 4500 replacements per year are required to keep the present number intact. At the present rate of admissions, we are getting a surplus of 5500 lawyers a year.

In Los Angeles County there are approximately 2,250,000 persons, of whom 5,000 are lawyers, or one lawyer to every 450 persons. Is it our climate?

JUDICIAL SELECTION

Discussion of the subject of judicial selection and tenure was one of the principal features of the recent meeting of the American Judicature Society at Washington, D. C. Charles A. Beardsley, former President of the California State Bar, led the discussion, according to the American Bar Association Journal's report, with a description of a plan of appointing judges by the Governor subject to confirmation by the voters as proposed by the Commonwealth Club of California and approved by the California State Bar. It is said that this probably was the first session devoted exclusively to the subject by any body of lawyers. The Society accepted the proposal of the National Municipal League to sponsor jointly a National Committee for the study of judicial selection and the Law Institute of John Hopkins University was invited to join.

UNAUTHORIZED PRACTICE

The Committee on Unauthorized Practice of Law of the American Bar Association has sent a questionnaire to some 1200 Bar Associations throughout the country. Hundreds of replicas were received from officers and committees of state and local Bar Associations and from many individual lawyers, says the report recently submitted at the Committee's meeting in Washington. These replies show that the encroachments of corporations and laymen upon the practice of law is widespread and rapidly increasing. Lay encroachments, it is stated, are most in evidence in metropolitan sections, and complaints are made against banks, trust companies, collection agencies, trade organizations, adjusters, and personal injury solicitation companies, accountants, tax reduction bureaus, property owners associations, real estate brokers, notaries public, Justices of the Peace and other laymen.

STATE BAR ACTS

Utah and South Dakota have joined the other states having a self-governing bar. Both Acts follow those of California, Nevada and Oklahoma.